IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4317 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

JAGDISHBHAI AMRATBHAI CONTRACTOR & 3 - Petitioner(s)
Versus
PRINCIPAL SECRETARY (APPEALS) REVENUE DEPARTMENT & 10 - Respondent(s)

==========

Appearance :

MR KK TRIVEDI for Petitioner(s) : 1 - 4.
None for Respondent(s) : 1 - 2,4 - 11.
GOVERNMENT PLEADER for Respondent(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 25/04/2006

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioners have challenged the legality and validity of the judgment and order passed by the Principal

Secretary (Appeals), Revenue Department, State of Gujarat, dated 15th March, 2005 passed in Revision Application No.1/2005 in allowing the said revision application quashing and setting aside the order passed by the Collector, Surat, dated 1st November, 2004 passed in RTS Appeal No. 38/2004.

2. The dispute is with regard to the revenue Entry No. 1210 with respect to the land bearing Survey Nos. 429, 430, 437 and 438 situated at village Sultanabad, Taluka Choryasi, District Surat, and the said Entry was mutated in the revenue record on 23rd February, 1988. The petitioners challenged the said Entry after a period of almost 14 years before the Deputy Collector, Choryasi Prant, Surat, being RTS Appeal No. 27/2002 and the Deputy Collector, Choryasi Prant, Surat, by its order dated 22nd October, 2003 dismissed the said appeal on the ground that the said appeal is filed after a period of 14 years. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Choryasi Prant, Surat, dated 22nd October, 2003 passed in RTS

Appeal No. 27/2002, the petitioners preferred appeal before the Collector, Surat, being RTS Appeal No. 38/2004 and the Collector, Surat, by its order dated 1st November, 2004 allowed the said appeal quashing and setting aside the order passed by the Deputy Collector, Choryasi Prant, Surat, dated 22nd October, 2003 as well as the Entry No. 1210 dated 23rd February, 1988. Being aggrieved and dissatisfied with the order passed by the Collector, Surat, dated 1st November, 2004 in allowing the said appeal quashing and setting aside the order passed by the Deputy Collector, Choryasi Prant, Surat, and also Entry No.1210, the respondent Nos.5 and 6 herein preferred revision application before the Secretary (Appeals), Revenue Department, State of Gujarat, being Revision Application No.1/2005 and the said revision application came to be heard by the Principal Secretary (Appeals), Revenue Department, State of Gujarat and the Principal Secretary (Appeals), Revenue Department, State of Gujarat by its judgment and order dated 15th March, 2005 has

allowed the said revision application quashing and setting aside the order passed by the Collector, Surat, dated 1st November, 2004 and restoring Entry No. 1210 by holding that the revenue Entry No. 1210 could not have been challenged by the petitioners after a period of 14 years and that the dispute with regard to the title is not required to be decided by the Revenue Authorities while exercising the RTS jurisdiction. Being aggrieved and dissatisfied with the judgment and order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat, dated 15th March, 2005 passed in Revision Application No.1/2005, the petitioners have preferred the present Special Civil Application under Article 226 of the Constitution of India.

3.Shri K.K.Trivedi, learned advocate appearing on behalf of the petitioners has vehemently submitted that the Revisional Authority has materially erred in quashing and setting aside the order passed by the Collector, Surat, more particularly, when it

was found that at the relevant time, when the Entry was mutated in the year 1988, no notice under Section 135(D) of the Bombay Land Revenue Code was served upon the petitioners and other heirs and therefore, the said Entry No. 1210 was rightly set aside by the Collector, Surat. It is further submitted that as and when the petitioners and other heirs came to know about the said Entry, the same came to be challenged in the year 2002 before the Deputy Collector, and therefore, there was no delay and therefore, it is requested to allow the present Special Civil Application.

4. Heard the learned advocates appearing on behalf of the parties.

5. It is required to be noted that the dispute is with regard to revenue Entry No. 1210 dated 23rd February, 1988. Apart from the fact that the said Entry came to be challenged by the petitioners before the Deputy Collector, after a period of 14 years, the fact remains that the dispute is with

regard to revenue Entry. As held by the Hon'ble Supreme Court of India as well as by this Court in catena of judgments, Entry in the revenue record does not confer any right, title or interest in favour of the parties, in whose favour the Entry is made, and the same is for fiscal purpose and for the purpose of paying the revenue and establishing prima-facie possession. Under the circumstances, merely because the names of the respondent Nos.5 and 6 continued in the revenue record, it does not confer any right, title or interest in their favour merely on the basis of the said Entry. The dispute with regard to title is to be settled by an appropriate proceedings before the Competent Civil Court and necessary entry can be made on the basis of the decision of the Civil Court crystallizing the rights between the parties. In the present case, it appears that the Special Civil Suit being Special Civil Suit No. 108/2003 is pending in the Court of learned Civil Judge (S.D.), Surat. Under the circumstances, necessary entry can be made on the basis of the judgment and decree, that may be

passed by the Civil Court, passed in Special Civil Suit No. 108/2003 and the present Entry No. 1210 dated 23rd February, 1988 is always subject to the ultimate outcome of the proceedings before the Civil Court. Under the circumstances, no illegality has been committed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat, in allowing the said Revision Application and quashing and setting aside the order passed by the Collector, Surat, dated 1st November, 2004.

6. With the above observation, the present Special Civil Application is dismissed.

(M.R.SHAH, J.)

kdc.